

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5906 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RAJAN SAKALCHAND PATEL

Versus

STATE OF GUJARAT

Appearance:

MR RN SHAH for Petitioners

MR K.C SHAH.ASSTT.GOV.T.PLEDER FOR for Respondent
Nos.1 and 2.

Respondent No.3 served.

MR PRASHANT G DESAI for Respondent No. 4

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 02/08/96

ORAL JUDGEMENT

The challenge in this petition under Article 226 of the Constitution is against the proposal of the respondent

authority for variation in the scheme for upgradation of slums situated on different parcels of lands which form part of town planning scheme No.22 in exercise of statutory powers under Sections 70,71 and 52 of the Gujarat Town Planning and Urban Development Act,1976 (President's Act No.27 of 1976) ('GTPUD Act') and Rule 26 of the Gujarat Town Planning and Urban Development Rules, 1976 ('GTPUD Rules').

The petitioners are owners of lands bearing final plot No.315 situated in town planning scheme No.22,Narayannagar road, Paldi, Taluka City District-AHMEDABAD. They purchased sub-plots of S.No.315 by registered sale deed in the month of December 1983. Thus,each petitioner is holding separate portion of land in the said final plot No.315.The petitioners have inter alia relied on consent purshis below Ex.5 and 6 in Civil suit No. 523/86 and also in civil suit No.6017 /86 dated 13.7.1987 and by placing copies of both the orders passed in the aforesaid suits pending between the petitioners and tenants of the said lands.

The case of the petitioners is that on account of political motive, a proposal came to be sent by respondent No.4 Ahmedabad Municipal Corporation for variation of Scheme No.22 with regard to original plot No.315 admeasuring 4186 sq.yds. of land situated at Paldi Extension Scheme No.22 by way of second variation and for slum upgradation. The said action is taken by respondent No.4 Corporation pursuant to its resolution No.897/1984-85 . It is the case of the petitioners that the town planning committee by its resolution No.244 passed the town planning scheme which was varied on 2.11.1975 which later on came to be declared as new scheme No.22 under section 23(1) of the GTPUD Act. A duty is cast upon the Municipal Corporation to prepare town planning scheme and under the provisions of section 122, appropriate authority,like that- respondent No.4 is entrusted powers to carry out such directions and instructions as may be issued from time to time by the State Government for efficient administration of GTPUD Act .in view of the provisions of sections 23(1)(2) and 41(1) of the GTPUD Act,respondent No.4 Corporation had prepared a scheme and declared it as final scheme No.22.The scheme had become final after undergoing the statutory provisions.

It is also the case of the petitioners that a letter was obtained and thereunder the proposal was sent under section 71(1) of the GTPUD Act and rules thereunder for variation of town planning scheme by another scheme.

Thus, the Corporation is trying to vary the scheme of final scheme by passing the aforesaid resolution No.897 of 1984-85. On the basis of the same, for upgradation of slums with the aid of World Bank, the respondent Corporation decided to acquire land occupied by public slums for their upliftment and/or establishment of various schemes. The Municipal Corporation sent proposal under section 71 for variation of the scheme to the Government.

The town planning officer of T.P. scheme No.22 issued notice dated 10.2.1988 in connection with proposal for variation in the original plot No.4186 of land situated in town planning scheme no.22 (Paldi extension), second variation for slum upgradation. The petitioners who are owners of the land submitted their objections. The petitioners have inter alia contended that there is no question of requiring their land for slum upgradation and to make variation second time, in final scheme no.22 as proposed by the Corporation in view of the fact that there are no huts as alleged. It is also the case of the petitioners that once the scheme is finalised, there is no justification to vary the same for the aforesaid purpose. If their lands are acquired, pursuant to the variation in the final town planning scheme, it will affect the fundamental rights of the owners of the lands. It is also the case of the petitioners that in the city of Ahmedabad, so many plots were reserved for similar purpose but for the reasons best known to them, most of the lands are released and thus, if the aforesaid proposal is not dropped and the disputed plots are not released, it will amount to an arbitrary action and it would be in violation of Article 14 of the Constitution. The petitioners have also cited some instances wherein some land came to be released. It is contended that there is violation of principles of natural justice in implementing the proposed variation in the town planning scheme.

The petitioners have thus questioned issuance of notice for variation of town planning scheme No.22 -Paldi Extension- contending that it is ex-facie illegal, ab-initio void and against the provisions of GTPUD Act and, therefore, the proposed variation of the GTPUD Act and scheme should be dropped. Therefore, the petitioners have prayed for writ of mandamus or any other appropriate writ against the respondents directing them to drop the proceedings for proposed variation in the town planning scheme No.22 of final plot No.315 for slum upgradation. Prayer is also sought for that the respondent-State be directed to not to approve the

preliminary scheme dated 15.2.1995.

The variation in the town planning scheme No.22 proposed for upgrading the facilities of slums is questioned by the petitioners on the aforesaid grounds. In order to appreciate the merits of the arguments raised on behalf of the petitioners, relevant legal set up may be stated at this stage.

Chapter V in GTPUD Act from Sections 40 to 76 deal with various provisions pertaining to town planning schemes. Under Section 40 appropriate authority is empowered to make a town planning scheme. Section 41 gives power to appropriate authority to resolve on declaration of intention to make scheme; whereas section 42 makes provision for making and publication of draft scheme. Section 43 notwithstanding contained in sections 41 and 42, empowers the State Government to require appropriate authority to make the scheme. Section 44 provides as to what should be the contents of the draft scheme. Reconstitution of plots pursuant to draft scheme can be made under section 45. Section 46 provides what course of law should follow in case of disputed ownership of plots. Objections to draft scheme are required to be considered under section 47; whereas, State Government has power under section 48 to sanction the draft scheme with or without modification. State Government is empowered to appoint town planning officer possessing requisite qualifications for the purpose of such scheme under section 50. The duties of town planning officer are provided in section 51. Section 52 which is important makes provision about contents of preliminary and final scheme. Provisions made in sections 53 to 63 are not material for our purpose.

Town planning officer has to submit to the State Government for sanctioning preliminary scheme and also the final scheme. Section 65 provides for power of Government to sanction or refuse to sanction the scheme and the resultant effect thereof. The scheme can be withdrawn under section 66 by the town planning officer before the preliminary scheme is forwarded to the Government.

In view of the provisions of section 67, all lands required by the appropriate authority shall, unless it is otherwise determined in such scheme, vest absolutely in the appropriate authority free from all encumbrances and all rights in the original plots which have been reconstituted into final plots shall determine and the final plots shall become subject to the rights settled by

the town planning officer on the day on which the preliminary scheme comes into operation in view of section 67. Appropriate authority is empowered to evict summarily for implementation of the scheme under section 68. Section 69 provides for power to enforce the scheme.

Most important provisions relevant for the purpose of this petition are incorporated in section 71 which give power to vary the scheme by another scheme. Section 70 of course gives power to vary scheme on the ground of error, irregularity or informality. We are vitally concerned in the present case with the provisions incorporated in section 71. Provisions of section 71 read as under :

"Notwithstanding anything contained in section 70, a town planning scheme at any time be varied by a subsequent scheme made, published and sanctioned in accordance with the provisions of this Act."

It becomes crystal clear from the plain perusal of the statutory provisions incorporated in section 71 that town planning scheme at any time can be varied by a subsequent scheme made, published and sanctioned in accordance with the provisions of the GTPUD Act. Remaining provisions of Sections 72 to 76 in Chapter V are not relevant for the present.

It is explicit from section 71 that town planning scheme can be varied at any time by a subsequent scheme to be made, published and sanctioned in accordance with provisions of GTPUD Act. Therefore, the contention cannot be accepted that town planning scheme which has become final and which is deemed to have been constituted under the GTPUD Act from the date of notification in respect thereof cannot be amended except by the legislature. Town planning scheme is the core of delegated legislation. The authority empowered could vary the same under section 71. Town planning scheme ipso facto is the form of delegated legislation and such a scheme is prepared not by the legislature but by the competent authority constituted under the GTPUD Act and in view of the delegated legislation. It is that very authority to whom power has been granted for the purpose of making variation in the scheme. Specific provisions are laid down and guidelines are made in respect of making a town planning scheme and making variation therein. There is no manner of doubt that town planning scheme at any time can be varied by a subsequent scheme to be made by the competent authority. No doubt, even after variation in the

town planning scheme, the procedure laid down in the GTPUD Act is required to be followed so as to vary the sanctioned or final scheme. Process is specifically prescribed under section 52. Pursuant to the said provisions of section 52, the impugned notification came to be issued. Variation which has been proposed is that some parcels of land are sought to be reserved for upgradation of slums. The petitioners have questioned the proposed variation and the impugned notification before disposal of the objections and final sanction of the said variation in the town planning scheme. In the opinion of this court, there is no substance in this petition as no illegality is noticed in the challenged action proposed to be taken by the respondent-authority for the purpose of varying the town planning scheme.

The contention complaining breach of Article 14 of the Constitution of India is also meritless and is required to be rejected. It is the case of the petitioners that in the city of Ahmedabad, so many plots came to be reserved for similar purpose, but for the reasons best known to the respondent-authority, most of the lands are released and if the impugned proposal for second variation in the town planning scheme is not dropped and their plots are not released, then, it would tantamount to arbitrary order and will be violative of Article 14.

It must be remembered that firstly, it must be established that other scheme and release of plots as alleged by the petitioners are similarly situated. For such a contention, necessary facts and materials ought to have been placed on record for consideration of complaint of breach of provisions of Article 14. Mere reference of some of schemes in the petition in the absence of specific averments and clear evidence in support of such contention, such averment cannot be entertained. Again, when the respondent authority has power to vary final or sanction town planning scheme by a subsequent scheme, it is an action in exercise of statutory power. The respondent-authority has issued the impugned notice and notification. How could a statutory forum of the State be prevented from undergoing statutory exercise of powers? the statutory forum could be prevented from exercising statutory powers as it is against the personal interest of the petitioners. The impugned action cannot be challenged as discriminatory or arbitrary in the absence of specific material on record and more so, when it is in exercise of statutory powers. Therefore, the contention complaining breach of Article 14 is without any substance and must be rejected. Accordingly, it is rejected.,

It was also submitted that there is no requirement for slum upgradation on the lands in the town planning scheme No. 22 as proposed by the Municipal Corporation as there are no huts. The petitioners have also alleged mala fides. The allegation of mala fides is not substantiated. Mere allegation without any supporting material is not sufficient of admission of this matter. Whether there is need for slum upgradation or not cannot be questioned by the petitioners being part and parcel of executive domain and falling in the policy matter of the respondent-authority. It is not for the court to decide whether land could be reserved for slum upgradation being a part of the policy matter. It must be remembered that court is obliged to tilt the balance between judicial restraint and judicial activism. Court cannot embark upon scrutinizing rightly executive policies of the State or statutory authority. Where, how and why slum upgradation project is required and is undertaken by the respondent authority should not be subjected to judicial review or scrutiny as the same would be falling within the domain of policy of the executive and that too in absence of mala fides and discrimination.

It also cannot be contended that there are no sufficient huts on the land in the town planning scheme which is sought to be varied and, therefore, the proposed variation in the town planning scheme is mala fide. The petitioners also cannot be heard to contend that they may be allowed to raise construction on their land for upgradation of slums instead of making variation in the town planning scheme and thereby acquiring plots belonging to the petitioners.. When the respondent authority is taking statutory action to vary the existing scheme by exercising statutory powers specifically conferred by the legislature, complaint of pecuniary loss to the petitioners is immaterial and irrelevant. The petitioners who are owners of the land cannot contend that they are ready to put construction for the weaker section of the society and on that ground, variation in the town planning scheme should be stopped. Such a contention is neither permissible nor legal.

The next contention complaining breach of provisions of Article 19 of the Constitution is equally misconceived. It is contended on behalf of the petitioners that if variation in the town planning scheme is allowed to be completed, for the purpose of slum upgradation, it will affect the fundamental rights of the owners of the land under Article 19. Article 19, no doubt, guarantees certain fundamental rights subject to the power of the State to

impose reasonable restriction on exercise of those rights. The provisions incorporated in Article 19 are thus intended to protect those rights against the State action in the legitimate exercise of its power to regulate private rights in the public interest. In fact, there is no hesitation in finding that there is no violation of provisions of Article 19 in making variation in the town planning scheme under exercise of the statutory powers.

Having regard to the facts and circumstances emerging from the record of the present case and the relevant proposition of law, the challenges against the impugned action and the notification dated 10.2.1988 with regard to proposal for second variation in original plot no.315 admeasuring 4186 sq.yds. of land situated at Paldi, Extention- scheme No.22 for slum upgradation, invoking aids of the provisions of Section 52(1) of the GTPUD Act absolutely meritless and, therefore, this petition deserves to be rejected at the threshold. Accordingly, it is rejected at the admission stage. Notice is discharged with cost which is quantified at Rs.1,500/- to be paid to respondents Nos. 1 to 3 in one set and also Rs.1,500/- to respondent No.4-Ahmedabad Municipal Corporation.